TECHNICAL NOTE 0872

Regulatory Framework for Privatization of Healthcare Facilities in Kazakstan

June 1997

Overview of the Regulatory Framework for Privatization of Healthcare Facilities in Kazakstan

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Executive Summary

From 21 April to 20 May 1997 consultants from Abt Associates Inc./USAID conducted an investigation of the regulatory framework for privatization of healthcare facilities in the Republic of Kazakstan (RK).

Main Findings:

- The legal framework for privatization is controversial due mainly to the lack of defined state policy for development of a privatized healthcare sector and a weak control of compatibility of privatization regulations issued by different state bodies;
- The issue of which healthcare facilities should be subject to privatization and when they should be privatized is unclear and appears to be the main source of confusion in the regulatory framework;
- Current regulations on healthcare financing do not provide the necessary level of confidence to the emerging private healthcare sector that it will receive stable revenues from health services funded through the state budget and the Mandatory Health Insurance Fund.

Recommendations

- The government of Kazakstan needs to monitor the compatibility of current and future privatization regulations to avoid the negative implications which controversial regulations have on the privatization process;
- Relevant state bodies should develop a policy facilitating the transition from state to private healthcare and ensuring the sustainable development of the private sector. The use of privatization as a tool for shifting the business risk of healthcare management to the private sector and relieving the state budget from part of the healthcare spending will not serve the public interest requiring reliable and affordable health services, unless adequate support to the private sector is ensured beforehand;
- Relevant state bodies should design a system ensuring adequate financing from public sources for the guaranteed and basic packages of services provided by private healthcare facilities as the revenues from user fees only will be inadequate to support the short-term sustainability of the private healthcare sector. If proper financing mechanisms are not developed and implemented, the privatization of healthcare facilities is likely to be seriously impeded. The key to creating adequate financing mechanisms is to combine in one the now separated public sources of healthcare funding coming through the state budget and the Mandatory Health Insurance Fund.

Introduction

After privatizing almost completely the industrial and raw materials sectors in 1993-1996, the government of Kazakstan initiated the privatization of the so-called social sectors, including healthcare, education, and culture. The privatization of healthcare facilities begun in the first half of 1996 with only a handful of objects privatized by the end of that year. In January 1997, the government adopted a program for privatization of social objects which included a list of 615 healthcare facilities to be privatized in 1997. This is roughly 8 percent of the more than 8,000 state-owned healthcare facilities in Kazakstan. During the first quarter of 1997, 184 healthcare facilities were offered for sale through auctions or tenders. Seventy seven facilities were successfully privatized by the end of March 1997 (see Appendix 1).[1]

The number and types of healthcare facilities subject to privatization have been subject to frequent changes, the main result of lacking state policy for development of a private healthcare sector and contradictory provisions in regulations issued by state bodies with authority in the privatization process. The existing high level of tolerance to inconsistencies among administrative regulations in Kazakstan is also one of the main reasons for confusion in the legal framework for privatization. Administrative bodies of national and local levels continue to issue privatization regulations with provisions of questionable legality.

Organization of the Report

The organization of this report follows closely the structure of the regulatory framework for privatization of healthcare facilities. This approach gives the reader a better understanding of the substance of and the relationship among laws and regulations concerning the privatization in the healthcare sector. Two sets of laws and regulations are discussed further, one concerning the general privatization framework and another including regulations specific to the privatization of healthcare facilities. Provisions of the general privatization legislation are discussed to the extent necessary for the understanding of the specific regulations. The report emphasizes description rather than analysis of regulations and their individual provisions in recognition that an analysis is of little use when administrative bodies systematically fail to comply with the existing regulatory framework for privatization.

Methodology

This report is prepared on the basis of review and analysis of various regulations of different superiority (see Appendix 2) as well as interviews with officials of different state bodies and representatives of projects of donor organizations (see Appendix 3).

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[1] According to representatives of the State Committee on Management of State Property (GKI), 99 healthcare facilities were sold by mid May 1997.

The Legal Framework for Privatization of Healthcare Facilities

1. Presidential edict "On Privatization"

The presidential edict "On Privatization" of 23 December 1995, set up the general legal framework for privatization of state property in Kazakstan. Its most important provisions, for the purpose of this writing, concern the types of property subject to privatization and possible privatization methods. Each of these two sets of provisions is briefly described next in the context of the privatization of healthcare facilities.

Type of Property Subject to Privatization

1. **State Enterprise** (Institution) (art. 6). The provision of this article regulates the sale of institutions as going concerns. It is directly related to the privatization of state-owned healthcare facilities, all of which currently have the status of institutions, rather than commercial entities.
2. **Privatization by individual projects** (art.7). This article provides that unique and especially big enterprises (institutions) should be privatized as individual projects (the so called "case-by-case"). For now there are no healthcare facilities planned to be privatized as individual projects.
3. **Property of an enterprise** (institution) (art.8). Sale of different properties of a healthcare institution is possible only upon its liquidation. This article is important to the extent that the ongoing restructuring in the healthcare sector requires closing (liquidation) of going concerns and sale or redistribution of their property.
4. **Departments and structural units of an enterprise** (institution) (art.9). Theoretically, a decision for segmentation of departments or other structural units of a healthcare institution and their subsequent privatization could be taken by the State Committee on Management of State Property (GKI). When the property, however, has been transferred for sale[2] from GKI to the State Committee on Privatization (GKP), decision for segmentation takes the GKP.[3] Neither GKI nor GKP have segmented structural units of healthcare facilities. Segmentation, however, is foreseeable in the future when the state can expect to receive more proceeds from the privatization of individual departments of a healthcare facility than those from the privatization of a facility as a single object.
5. **Shares** (art 10). State-owned shares of juridical persons registered as commercial entities can also be subject to privatization. All state-owned healthcare facilities are still state institutions and therefore art. 10 does not apply to them. Should the status of state-owned healthcare facilities be changed in the future, this provision will naturally become important for their privatization.

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[2] It should be noted that a presidential edict entitled "On Consecutive Measures for Reforming the System of State Bodies of the RK" of 4 March 1997 provides for the closing of the two committees and transferring their functions as follows: GKI to the Ministry of Finance and the Investment Committee; GKP to the Ministry of Finance.

[3] The sale of state property has two phases. The first one is the GKI's authorization of the sale, followed by a transfer of the state property to the GKP whose sole responsibility is to sell it.

Privatization Methods

1. **Sale of state property at an auction or tender**
   When auctioned, healthcare facilities are sold to the highest bidder. When tendered, they are sold to the party offering the best conditions for post-privatization use of the property. Generally, there are mandatory conditions to all tenders such as preservation of the property's profile, ban or limit on layoffs, etc.

2. **Indirect privatization of state property**
   Indirect privatization is a term used to indicate the steps which lead indirectly to privatization of state property such as registration of state enterprise (institution) as a joint stock company, property lease, and transfer of property under the management of a private party. Issues relating to management and lease of healthcare facilities are discussed in more detail further in the report.

2. Governmental Action Plan for 1996-1998

On 13 December 1995, a presidential edict endorsed the "Governmental Action Plan for Widening of the Reforms in 1996-98" (action plan). Sub-chapter IV.4.1 of the action plan contains provisions specific to the reforms in the healthcare sector. The general goals of the healthcare reforms are to stimulate the creation and development of medical insurance, private medical practices, and a market for paid medical services. The action plan also calls for privatization of parts of existing medical institutions as a way of increasing the set of state-owned healthcare facilities operating on commercial basis (hozraschot) and the number of private medical practices.

3. The Privatization Program for 1996-1998

On 27 February 1996, the government of Kazakstan issued a decree No 246 which adopted the "Program for Privatization and Restructuring of State Property in the Republic of Kazakstan in 1996-1998" (privatization program). The privatization program divides all healthcare facilities into two groups, subject and not subject to privatization. It also provides for creation of a list of facilities providing health services guaranteed by the state, facilities of special importance, and unique facilities any of which can be privatized only by a special governmental decision. All healthcare facilities not included in this list should be subject to privatization. A later governmental decree, issued soon after this one, effectively amended this provision by adopting two lists instead of one, one list with facilities subject to privatization in 1997 and another one with facilities not subject to privatization (see below a detailed discussion of decree No 65). This is the first example of unstable regulatory approach to the healthcare privatization.

When there is no market demand for a facility subject to privatization, it could be tendered for management or leased which entitles the manager/lessee to buy out the property with priority to other potential buyers at the end of the management/lease contract. Lack of demand should be determined in relation with art. 22 of the "Regulation on Organizing of Open Tenders for Sale of Privatization Facilities," adopted by a GKP Decree of 11 June 1996, No 240. Thus, if an object has remained unsold for a period of six months since its transfer from GKI to GKP, it should be

returned to GKI which can organize a tender for management or lease.[4] There is anecdotal evidence that state officials in certain oblasts have attempted to conclude management/lease contracts with private parties before the facilities have been offered for privatization. Such a shortcut, however, violates the provisions of the privatization program.

Indeed, GKI is entitled to lease facilities before they have been offered for sale. However, in this case, the lessee is not entitled to priority in the privatization which makes this type of lease not a transitional stage to privatization. There are no national regulations on how state property can be leased to physical or juridical persons. Instead, each oblast GKI committee drafts its own regulations which require the approval of the National GKI before implemented. It is important to note that any lease payments go to the local budget, while the fees from management contracts and all privatization proceeds go to the state budget. This makes local authorities more interested in lease contracts.

There are no regulations on how state institutions, such as health facilities, could be transferred for management. According to GKI officials, within whose scope is the drafting of such regulations, GKI is ready to draft them "if there is demand for the regulations." If drafted, the regulations will most likely be similar to the "Regulation on Transfer under Management of State Enterprises and State Packets of Shares in Joint Stock Companies" adopted by a GKI decree No 381 of 23 May 1996.

The privatization program requires from physical or juridical persons participating in a tender for a healthcare facility to have the corresponding level of professional expertise (presumably be medical professionals) or possess a license. Art. 10 (2) of the presidential edict "On Licensing" No. 2201 of 17 April 1995 requires a license for the exercising of medical or healing (vrachebnoi) activity. Governmental Decree No 1894 of 29 December 1995 "On Implementation of the Presidential Edict of 17 April 1995 No 2201" entitles the Ministry of Health (MOH) to be the licensing body for activities requiring a license in the health sector.

5. The Program for Privatization of Certain Economic Sectors

In implementation of the edict "On Privatization" and the Privatization Program, the government of Kazakstan issued a decree entitled "On Sectoral Programs for Privatization and Restructuring" No 65, dated 14 January 1997. This decree adopted the "Sectoral Programs for Privatization and Restructuring of the Oil and Gas and Transportation and Communication Complexes, Enterprises within the System of the Ministry of Industry and Trade of RK, Healthcare, Education, Science, Culture, and Sports" (sectoral program).

The sectoral program sets up a more detailed guideline for the privatization of healthcare facilities. It also provides for the establishment of inter-institutional committees for implementation of the privatization and restructuring programs. Such

[4] If an object has not been sold within the 6 month period, GKI may decide to extend this term.

committees should include representatives of GKI and GKP, sectoral ministries, and oblast akims (head of oblast health administration).

The goal of the sectoral program is through privatization and restructuring to "develop a private sector; highly motivate service providers and preserve the minimum number of state guaranteed medical services; and attract additional resources." The sectoral program also adopts the principles of optimizing existing infrastructure; establishing market structures and developing competition; and taking into consideration the level of social and economic development of the regions of Kazakstan when selecting facilities and privatization methods.

Following the provisions of the privatization program, the sectoral program also provides for division of all state-owned healthcare facilities into two groups—subject and not subject to privatization. The sectoral program, however, goes one step further and defines the types of facilities which should not be subject to privatization, namely, blood transfusion centers and facilities for treatment of cancer, tuberculosis, STDs, and AIDS. The sectoral program also adopts a list of thirty healthcare facilities not to be subject to privatization. The list, given in appendix 9 to the sectoral program, includes mostly medical research centers which do not fit the criteria for facilities not to be subject to privatization but whose importance mandates their remaining state-owned.

The facilities subject to privatization are listed in appendix 7 to the sectoral program. These facilities were selected individually for each oblast by committees including the heads of oblast healthcare departments, deputy akims coordinating healthcare issues, and representatives of the MOH. It is difficult, however, to find out precisely what selection criteria were used. According to some MOH officials, the used selection criteria were those provided by paragraph 17 of a Governmental Decree No 1336 dated 1 November 1996 and entitled "On List of Objects of Exclusive State Ownership not Subject to Privatization in 1996-1998." Paragraph 17 defines the types of healthcare facilities not subject to privatization as "facilities of primary and specialized care and facilities which are sole providers of medical services on a given territory." Paragraph 17, however, was repealed by the sectoral program which established new criteria for determination of which healthcare facilities should not be subject to privatization (see the previous paragraph). Even if old criteria have been used in the selection process, the list of appendix 7 seems to comply with the criteria of the sectoral program. Whatever selection criteria (approach) were used to compose appendix 7, it is clear that they were not uniform throughout all oblasts. Thus, in some oblasts the sole provider of healthcare services on a given territory was put on the privatization list while in other oblasts sole providers were excluded from it.[5] This observation suggests that appendix 7 was composed on the ground of the subjective opinions of individual members of the selection committees about which

[5] In Akmola oblast two operating hospitals, including a raion hospital, are to be privatized while in many other oblasts no raion hospitals will be privatized. Similar to this, again in Aktiubins, a SVA (semeino vrachebnaia ambulatoria) has been included in the privatization list, while in most other oblasts no SVAs will be privatized.

facilities should be privatized. The only limitation to this subjective approach was the criteria of the sectoral program.

It is important to highlight here some of the most confusing provisions relating to what and when should be privatized. According to the privatization program, all healthcare facilities, except for the ones excluded from privatization, should be privatized by the end of 1998. The sectoral program, however, takes a different approach by providing a list of facilities to be privatized in 1997. The sectoral program, however, did not specifically provide that all facilities, other than those not subject to privatization and those included in appendix 7, should be privatized in 1998. It remains unclear whether all remaining facilities will be privatized by the end of 1998 to ensure compliance with the goal of the privatization program or we can expect the government to approve another short list of facilities subject to privatization in 1998 similar to the one provided by appendix 7 of the sectoral program. The strong opposition to the privatization in the healthcare sector on the part of MOH makes the appearance of a 1998 list of facilities subject to privatization very likely.

The lack of clarity surrounding these important issues favors the notion that the governmental privatization regulations welcome free interpretation. For instance, GKI interprets appendix 7 as providing the list of the minimum number of facilities which should be privatized in 1997. Under this interpretation, GKI assumed that other healthcare facilities could also be subject to privatization as long as they are not included in appendix 9 of the sectoral program or do not fit the criteria for facilities excluded from privatization. To "legalize" its interpretation, GKI, soon after the enactment of the sectoral program, issued a decree entitled "On Approving a List of Objects within the Sectors of Healthcare, Culture, Education, and Sports subject to Privatization in the First Quarter of 1997" No 61 of 6 February 1997. As its title suggests, the decree approved a list of healthcare facilities to be privatized in the first quarter of 1997. Many of these facilities are not listed in appendix 7 of the sectoral program. GKP, however, interpreting appendix 7 as providing an exhaustive list of facilities subject to privatization in 1997, refused to privatize additional facilities transferred to them from GKI. Despite this refusal some of the additional facilities were privatized. To add to this confusion, the MOH issued an order No 246 of 19 May 1997, which set up new privatization criteria which deviate from the criteria of the sectoral program. Although the sectoral program takes precedence to the MOH order, the latter will additionally complicate the already difficult for comprehending regulatory framework.

The sectoral program divides all healthcare facilities subject to privatization into two categories, going concerns and emptied buildings. Approximately 70 percent of the facilities in appendix 7 are going concerns. Emptied facilities should be auctioned while going concerns should be sold at open tenders. When a going concern is being privatized, the following conditions should be made a mandatory part of the tender:

- preserving the profile of the facility;[6]
- ensuring that along with the delivery of paid medical services, the facility will deliver the volume of services financed by the state and local budgets with mandatory additional financing up to the minimum services guaranteed by the state;
- ensuring the environmental safety of the facility;
- developing new healthcare practices (napravlenia);
- providing emergency care;
- ensuring the fulfillment of the basic mandatory medical insurance program.

6. Recommendations on the Preparation and Organization of Sale of Healthcare Facilities

A GKP Decree No 501 of 23 October 1996 adopted "Recommendations on the Preparation and Organization of Tenders for Sale of Healthcare Facilities" (recommendations). Oblast GKP committees use the recommendations as a guideline in the privatization of healthcare facilities. The following provides a description of and comments on the most important provisions of the recommendations:

1. Going concerns of special importance should be sold through investment tenders. Oblast GKP committees and MOH departments determine which facilities are of special importance. The definition of investment tender is provided by art. 3 of the GKP's "Regulation on Organizing of Open Tenders for Sale of Privatization Facilities"—an open tender whose winner becomes the bidder having the best project for use of the facility in excess of the basic conditions of the tender. The other type of open tender is the so called commercial tender whose winner commits to comply with all conditions of the tender and offers the highest price for the property. Facilities which are not of special importance can be privatized through an investment or commercial tender.

2. Methods of payment. If the winner of a tender agrees to provide the state guaranteed package of healthcare services, the sale price is decreased commensurate to the cost of free-of-charge services. This provision, however, is overruled by the sectoral program which requires from bidders to provide the guaranteed by the state package of health services.

3. List of conditions which could be required from bidders (none of these conditions is mandatory). It should be noted that the sectoral program's mandatory conditions for tenders take precedence to those of the recommendations, e.g., a condition which is provisional under the recommendations but mandatory under the sectoral program must be included in the tender terms.

[6] The specific conditions pertaining to the preservation of profile are contract specific and are determined by oblast GKP committees.

7. The MOH order No 246 of 19 May 1997 adopting Program for Privatization and Restructuring of Healthcare Facilitates in 1997-98

This order provides that the sale of healthcare objects should proceed only in accordance with the list of the sectoral program. The sole purpose of this statement seems to be to show the strong disagreement of the MOH with GKI decree No 61 (see discussion in section 5 above). As mentioned before, the order establishes criteria for privatization of healthcare facilities different from those provided by the sectoral program. It should be noted that when provisions of the order are inconsistent with provisions of superior regulations (governmental or presidential) the latter take precedence. It should also be kept in mind that the order has power only within the MOH. It seems that the MOH may have adopted the new criteria for privatization in an attempt to influence subsequent governmental privatization regulations and especially a possible governmental approval of a list of healthcare facilities to be privatized in 1998.

Another important provision of this order is relating to the transformation of the juridical status of those state-owned healthcare facilities which will be subject to restructuring. According to this provision, healthcare facilities should be registered as commercial entities before restructured. This change of legal status will facilitate the privatization of large facilities such as hospitals and policlinics the purchase of which requires a larger amount of capital which is easier and more likely to be provided by a larger pool of potential shareholders, than individual investors.

Conclusion

The future of the privatization of healthcare facilities depends mainly on:

- The development of consistent state healthcare policy with account to the specifics of the emerging private healthcare sector;
- The design of a system ensuring adequate and stable financing from public sources for the guaranteed and basic packages of services provided by private healthcare facilities;
- The clarification of ambiguous provisions in the current privatization regulations; and
- The establishment of normal cooperation and coordination among the main stakeholders in the privatization process—the MOH, GKI, GKP, and Oblast Administrations.

The privatization of healthcare facilities has stalled and, although the real reasons for that need to be further investigated, it is worth pointing to a few of the most likely ones: shortage of available investment capital, unfavorable terms of privatization tenders; unstable and unclear regulatory environment for doing business in the healthcare sector. If all or some of these very likely impediments are properly

addressed, we may expect to see not only an improved privatization process in the future, but also improved sustainability of the entire healthcare sector.

Appendix 1

Privatization of healthcare facilities as of 31 March 1997
(Information provided by GKP)

No	Oblast	Offered for Sale	Sold
1	Akmola	17	5
2	Aktiubinsk	2	2
3	Almata	2	2
4	Atirau	0	0
5	East-Kazakstan	31	7
6	Zhambil	13	6
7	Zhezkazgan	24	8
8	West-Kazakstan	5	3
9	Karaganda	21	9
10	Kizilorda	2	1
11	Kokshetau	3	0
12	Kostanai	11	4
13	Mangistau	7	1
14	Pavlodar	18	10
15	North-Kazakstan	9	6
16	Semipalatinsk	12	7
17	Taldikurgan	1	0
18	Torgai	2	2
19	South-Kazakstan	1	1
20	Almaty City	3	3
21	Baikonir	0	0
Total		**184**	**77**

Appendix 2

List of Laws and Regulations Relating to the Privatization of Healthcare Facilities

Title	Issuing Body	Date
Edict "On Privatization"	President of RK	23 December 1995
Program for Privatization and Restructuring of State Property in the RK	Government of RK	27 February 1996
Sectoral Programs for Privatization and Restructuring in the Oil and Gas and Transportation and Communication Complexes, Enterprises within the System of the Ministry of Industry and Trade, Healthcare, Science, Culture, and Sports	Government of RK	14 January 1997
Regulation on Valuation of Facilities Subject to Privatization	Government of RK	6 May 1996
Regulation on Organization of Auctions for Sale of Privatization Facilities	State Committee on Privatization of State Property	22 February 1996
Regulation on Organizing of Open Tenders for Sale of Privatization Facilities	State Committee on Privatization of State Property	11 June 1996
Recommendations on the Preparation and Organization of Sale of Healthcare Facilities	State Committee on Privatization of State Property	23 October 1996
Regulation on Sale of Privatization Objects under Deferred Payment Terms	State Committee on Privatization of State Property	24 may 1996
"On Approving a List of Objects within the Sectors of Healthcare, Culture, Education, and Sports subject to Privatization in the First Quarter of 1997"	State Committee on Management of State Property	6 February 1997
Regulation on Transfer under Management of State Enterprises and State Packets of Shares in Joint Stock Companies	State Committee on Management of State Property	23 May 1996
Order No 246 adopting "Program for Privatization and Restructuring of Healthcare Facilitates in 1997-98"	Ministry of Health	19 May 1997

Appendix 3

List of Interviewed State Officials and Representatives of Donor Organizations

State Committee on Management of State Property (GKI),

- Meiramkul Altinbekova Duzbaeva, head of the Department on Management of Social Sphere, Real Estate, and Analysis, 62-36-28;
- Baglan Amurovich Sarsebaev, specialist on military conversion, 62-06-47.

State Committee on Privatization (GKP)

- Damira Seizhanova Polimbetova, deputy head of the Department on Privatization of Social Objects, 62-21-26;

Ministry of Health

- Ibadulla Anambaevich Amanbaev, chief specialist at the Department of Clinical and Preventive Care and Health Reforms, 33-47-40;
- Marat Mendehanovich, legal consultant, 33-09-86;
- Alexander Okonishnikov, deputy head of the Department on Preventive and Medical Care, 33-16-97.

Donor Organizations

USAID

- CARANA Corporation (former Small Privatization Project), Kairat Nazhmidenov, consultant, 33-65-63;
- Mass Privatization Project, Larisa Barskaya, lawyer, 39-18-83.

TACIS

- Social Policy and Enterprise Restructuring Project, Peter Can, consultant, 32-37-55.